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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**HERBERT E. MUMPOWER,**

**Petitioner,**

**vs.**

**UNITED STATES OF AMERICA,**

**Respondent.**

**MEMORANDUM DECISION AND  
ORDER**

**Case No. 2:09CV240 DAK**

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This matter is before the court on pro se Petitioner Herbert E. Mumpower's ("Petitioner") pro se Motion to Proceed Without Payment of Filing Fees and Motion for Certificate of Appealability. This court previously denied Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255. Under 28 U.S.C. § 2253, a certificate of appealability "may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *United States v. Silva*, 430 F.3d 1096, 1100 (10th Cir.2005) (quoting 28 U.S.C. § 2253(c)(2)). To make this showing, Petitioner must demonstrate "that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003)). Petitioner has not, however, made a substantial showing of the denial of a constitutional right, and the court therefore denies his request.

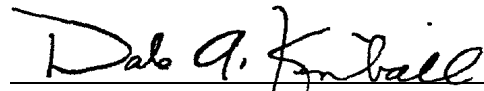
In addition, to qualify for in forma pauperis status, a petitioner must show “a financial inability to pay the required fees” and “a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *McIntosh v. U.S. Parole Comm'n*, 115 F.3d 809, 812 (10th Cir.1997) (quoting *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991)) (internal quotation marks omitted). The court finds that “the appeal is not taken in good faith because Petitioner has not shown the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.”

### CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Petitioner’s Motion for Leave to Proceed Without Prepayment of Filing Fees [Docket # 13] is DENIED, and Petitioner’s Motion for Certificate of Appealability [Docket # 17] is DENIED.

DATED this 21<sup>st</sup> day of December, 2009.

BY THE COURT:

  
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DALE A. KIMBALL  
United States District Judge